

November 28, 2006

The Honorable Donovan W. Frank  
United States District Court for the District of Minnesota  
738 Federal Building  
316 North Robert Street  
St. Paul, MN 55101

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Re: In Re Guidant Defibrillator Litigation – MDL No. 05-1708 (DWF/AJB)

Dear Judge Frank:

Guidant submits the following letter in response to your November 17, 2006 Letter regarding outstanding issues. I will address each of them in order:

**1. Plaintiffs' Fact Sheets:**

Guidant remains willing to consider a revised and streamlined Plaintiff Fact Sheet (“PFS”). Plaintiffs several weeks ago proposed one version of a drastically abbreviated PFS which Guidant was compelled to reject because it eliminated large substantive sections of the current PFS that elicit key information which this Court has already ruled Guidant is entitled to pursue. Guidant is, however, willing to consider a revised version that does not radically eliminate major categories of the information sought in the current versions of the Court-approved PFS. The parties have set aside time on December 1 to meet and confer on this issue.

It is Guidant’s understanding, based upon representations made by Liaison Counsel, that the current format of the PFS has proven confusing to various plaintiffs, and that the focus of this exercise is to reformat and streamline the PFS so as to make it more reader-friendly. Guidant does not believe these efforts were intended to explore what information currently sought in the PFSs can be eliminated, but rather how that same kind of information can be obtained through superior formatting and/or more clearly-articulated questions.

The parties have already fully briefed the issue of what information Guidant may seek through the PFS process. This Court has already ruled on those issues. Guidant did not request leave to seek any information through the PFS process it did not view as important to the defense of these cases. Guidant respectfully suggests that now is not the time to revisit the question of what information Guidant may seek through the PFS. The claim that key aspects of the PFS must be lopped off merely because the current version is too burdensome for plaintiffs to complete rings hollow when espoused by plaintiffs’

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counsel who have demanded that Guidant produce 10.4 million pages of documents to date in this litigation.

While Guidant is willing to consider deleting certain discrete questions if it will greatly simplify the process of reorganizing these PFSs, Guidant has no interest in abandoning any wholesale areas of inquiry approved by this Court and incorporated in the current version of the PFSs. If meet and confer efforts focus on what current areas of inquiry Guidant is willing to forego, as opposed to how plaintiffs believe the PFS can be reformatted or reorganized to minimize reader confusion, the meet and confer process will likely be unproductive.

**2. Proposed Order Concerning Improperly Joined Cases:**

Guidant submitted its Proposed Pretrial Order No. 25 on Severance of Improperly Joined Cases as Exhibit C to the October 25, 2006 Joint Agenda. Plaintiffs have not yet submitted a competing version, but have pledged to do so by December 8, 2006.

**3. Scheduling of Preemption Motion and Motions to Dismiss:**

Guidant would like to discuss the timing of resolution of these pending motions at this week's status conference, and will be prepared to do so.

**4. Motion to Amend Preservation Order:**

The parties are in agreement that the current preservation order should be amended to extend to pacemaker devices as well as defibrillators, and have resolved their points of disagreement. Guidant will submit an appropriate Proposed Order with the parties' Joint Agenda.

**5. Motion to Compel Production of Backup Tapes:**

The parties agree that this pending motion should be deferred while the parties explore whether the discovery of active data can obviate the need to consider the restoration of inactive data held on Guidant's backup tapes. Guidant has performed searches of selected custodians' e mail across the e mail server using search terms provided by plaintiffs. Guidant is currently processing the documents obtained from these searches, and will produce them to plaintiffs over the coming weeks. Plaintiffs will then analyze this data and determine whether they still believe they require production of data possibly contained in Guidant's backup tapes, or whether the data produced using these search terms across Guidant's e mail server will provide them the information they seek.

**6. Discovery-related issues raised in the PLC's July 21, 2006 Letter:**

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Plaintiff's July 21 letter raised several ongoing discovery issues, many of which Guidant did not believe were ripe for adjudication. Guidant responded on July 28 in its letter to the Court addressing these issues. Since then, the parties have met and conferred telephonically on a weekly basis in an effort to resolve these and other ongoing discovery issues. Guidant has attempted to prioritize plaintiffs' many outstanding requests, and has worked with the PLCC to do so on an ongoing basis. Guidant is unaware after conferring with plaintiffs' counsel most recently on November 22 of any outstanding discovery disputes requiring this Court's intervention. Plaintiffs have promised to by the close of business today provide Guidant with a list of outstanding discovery issues they would like Guidant to prioritize, and Guidant will do so to the best of its ability.

One outstanding issue remains Guidant's production of Defendant Facts Sheets. Guidant disclosed to the PLCC on October 31 that, due to a clerical error, it had not yet produced a number of fact sheets that were to have been due on October 30. Guidant has identified the clerical error leading to this mistake and corrected it, and has accelerated the collection of documents and data for these remaining overdue fact sheets, which it believes it will be able to produce shortly, many of which in the next two weeks. Guidant anticipates being able to produce all currently due Defendant Fact Sheets by the second week of December.

**7. Issues Raised in the William Lazarus Letter:**

Guidant believes this dispute to be between the PLCC and Mr. Lazarus, and offers no position on this issue so long as the PLCC obeys the directives of this Court set forth in ¶ 18 of Pretrial Order NO. 2 to grant all plaintiffs access to the Document Depository subject to the Protective Order and the imposition of certain charges, if necessary, to cover related costs.

**8. Proposal for Guidant's Fact Sheet:**

The parties agree this issue was resolved by the Court's Memorandum and Order on Guidant's Case Profile Sheet. No further action is required.

**9. Remand Issues in *Vega* and *Cabrera*:**

The motion to dismiss the hospital defendant in *Vega* is fully briefed and ready for either argument or resolution by the Court. In *Cabrera*, the plaintiff will need to file an opposition to the motion to dismiss the hospital defendant once a hearing date has been set.

**10. Rebecca Smith Device Issues:**

After considerable correspondence with Martin Ramey, Guidant believes these issues are now moot, and does not believe Mr. Ramey will move to seek further relief against Guidant.

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**11. Website Issues:**

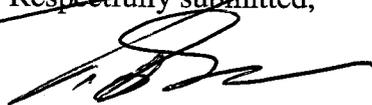
Guidant believes this issue relates exclusively to the PLCC.

**12. Issues Relating to the Shortening of Time for Representative Plaintiff Written Discovery Responses:**

Much of this issue has been mooted because the full thirty-day period has elapsed for most of the outstanding discovery. Plaintiffs have now agreed to respond to the balance of outstanding discovery within twenty days. No further action is required of the Court on this issue.

Please let us know if we can provide any additional information to the Court. We look forward to discussing these and other issues at the November 29 Status Conference.

Respectfully submitted,



Timothy A. Pratt

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